

Remarks

The Official Action mailed June 15, 2009 has been carefully considered. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

According to the Office Action, claims 1-15 remain pending in the application. Claims 5-9, 11, 13 and 15 have been withdrawn. However, for reasons noted below, it is believed that claim 7 should not be withdrawn.

Claim 1 has been amended to recite “characterised in that said at least one tongue-like element engages said container edge from behind with at least one part of said at least one tongue-like element, said part of said at least one tongue-like element can be guided outwards, in front of said container edge, by the pivoting movement such that said part of said at least one tongue-like element is visible to a user of said container, and said part of said at least one tongue-like element cannot be guided back behind said container edge when said at least one tongue-like element is pivoted back towards the starting position.” Support may be found at paragraph [0009] of the published U.S. application which recites in part “[d]uring the pivoting movement to be performed in order to raise the cover, said part of the tongue-like element engaging the container edge from behind is guided outwards, in front of the container edge. This provides a visible indication that makes it unequivocally clear whether or not the container has already been opened at some time, in that the part of the tongue-like element previously covered by an area of the container edge is suddenly visible to the user.” See also paragraphs [0011], [0021] and [0030]. Accordingly, no new matter has been entered.

Claim 1 has also been amended to recite that part of the tongue-like element is initially invisible towards an observed or from the outside. Support can be found in FIG. 2 wherein a portion of the tongue-like element 13 is covered by the tongue 12. In addition, paragraph [0009] of the published application recites that part of the tongue like element previously covered by an area of the container edge is suddenly visible to the user.

As an initial matter, the Examiner has disagreed with some of the claims associated with the election of Species 2. The Examiner noted that claim 5 recites a

“tongue 12” which is not shown in **FIG. 4**. The Examiner also noted that claim 15 recites “a mark” which is not shown in **FIG. 4**. Claims 5 and 15 were therefore withdrawn.

However, the Examiner at page 2 of the Office Action states that claim 7 depends from *claim 5*, and that claim 7 should be treated similarly. Applicants respectfully disagree. As can be noted in the Amendments to the Claims section of this paper, claim 7 depends from claim 4 and should be included in the current prosecution.

The title of the invention has been described as “not descriptive”. The title of the invention has been amended to recite “Container With A Cover Indicating Previous Opening”, as shown in the Amendments to the Specification portion of this paper. Support may be found at paragraph [0007] of the published U.S. application which recites “[t]herefore, the object of the invention is to create a container with a device for raising the cover located on the container, which is easy and inexpensive to manufacture and displays a device that is capable of unequivocally indicating previous opening of the container.” Accordingly, no new matter has been entered.

Claims 1-4, 10, 12 and 14 were rejected under 35 U.S.C. § 112, second paragraph, on the grounds of being indefinite for the limitation “where the cover is detachably connected thereto and whereon at least one tongue-like element is connected in such a way.....”. Claim 1 has been amended to recite “wherein the cover is detachably connected to the container and where said container edge includes at least one tongue-like element connected in such a way....”. Support may be found at paragraph [0029] which recites in part “[b]etween two lateral edges **6** of container edge **2**, an opening **7** is provided that is open towards the bottom and into which tongue-like element **8**, connected to the container edge, fits in its starting position, at a distance from the lateral edges.” Accordingly, no new matter has been entered.

In addition, claim 4 was rejected for not having positive antecedent basis for “recess”. Claim 4 has been amended to recite “a recess”. Accordingly, no new matter has been entered.

Further, claims 1, 2, 3, 7, 10, 12 and 14 have been amended to provide positive antecedent basis for said at least one tongue-like element, said container wall, said

container edge, a downward-pointing edge, said recess, said edge projection and a lower end. Accordingly, no new matter has been entered.

Claims 1-4, 10, 12 and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Binder (EP 0565967).

The present disclosure is directed at container closed by a cover wherein a tongue-like element of the container may be pivoted upwards to raise the cover by guiding part of the tongue-like element past a protruding tongue. The part of the tongue-like element **can not** be guided back past the protruding tongue to its starting position due to an interference of the tongue against the backside of the part. This provides a visual and positive physical indication that the container is not in its original condition.

Binder appears to be directed at a container comprising a seal wherein at least one of the face edges of the ends of the latch **14** is connected to the associated edge of the tongue-like element via thin-walled plastic webs **27** or a plastic film. In addition, Binder provides a pivoting action of the latch to raise the cover but does not teach or suggest that “said at least one tongue-like element engages said container edge *from behind* with at least one part of said at least one tongue-like element, said part of said at least one tongue-like element can be guided outwards, in front of said container edge, by the pivoting movement, and *said part of said at least one tongue-like element cannot be guided back behind said container edge* when said at least one tongue-like element is pivoted back towards the starting position.” (Emphasis added.) In other words, referring to **FIG. 4** below, when tongue-like element **8** is in a first position (latched), part **13** (shown by dashed lines) is behind lateral edge **6**. Once tongue-like element **8** is guided outwards (out of the page in a pivoting movement), the part **13** is guided past edge **6** such that the part **13** lies on the surface of part **6** and *cannot* be guided back and in such a position provides a positive indication that the container has been opened.

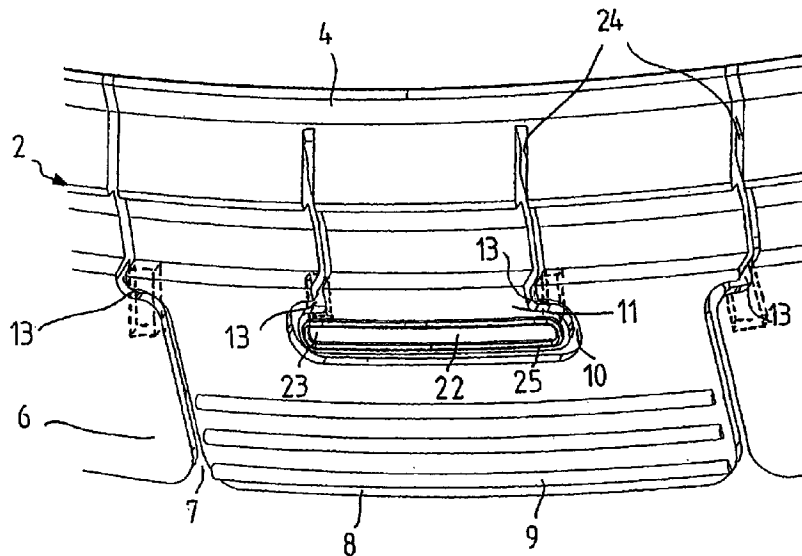


Fig. 4

As one can see from Binder, **FIGS 5 and 6**, it is possible to pivot the latch **14** outward so that **13** clears **17**, and then to pivot it back so that **13** reengages **17** and there is no indication of the container having been opened.

Paragraph [0007] of the published U.S. application recites “[t]herefore, the object of the invention is to create a container with a device for raising the cover located on the container, which is easy and inexpensive to manufacture and displays a device that is capable of unequivocally indicating previous opening of the container.” Binder does not accomplish such.

Finally, claim 1 has been amended to recite “said part of said at least one tongue-like element can be guided outwards, in front of said container edge, by the pivoting movement such that said part of said at least one tongue-like element is visible to a user of said container”. Binder does not teach or suggest such a feature.

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-121.

Respectfully submitted,

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